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DEC 10 2004

OFFICE OF PETITIONS

In re Application of :
Linda Sweeting :
Application No. 09/917,308 : **DECISION ON PETITION**
Filed: July 27, 2001 :
Attorney Docket No. SWEETING-PA-1 :

This is a decision on the "PETITION TO REVIVE APPLICATION PURSUANT TO 37 CFR 1.137(b)," filed August 30, 2004.

The petition under § 1.137(b) is **DISMISSED**. For the reasons set forth herein, the petition and election as filed cannot be accepted. Proof of authority to take action in this application is required.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to timely file a proper reply to the restriction requirement mailed July 15, 2003. This Office action set a shortened statutory period for reply of one month, with extensions of time obtainable under § 1.136(a). No reply having been received in the Office and no extension of time obtained, the above-identified application became abandoned on August 19, 2003. A Notice of Abandonment was mailed on February 5, 2004.

The instant petition was filed by Royal W. Craig as "attorney of record." Therein, attorney Craig acknowledges that sole inventor Linda Sweeting died on or about Sunday, September 23, 2003. The petition suggests that attorney Craig may be acting on behalf of Towson University, as assignee, in filing of the instant petition. However, attorney Craig has not provided evidence of an assignment of this application to either himself or Towson University. Nor has attorney Craig presented a power of attorney

to himself from the heirs, administrators, executors, or assignees.

35 U.S.C. 117 Death or incapacity of inventor.

Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor.

MPEP 409.01 Death of Inventor, provides that:

Unless a power of attorney is coupled with an interest (i.e., an attorney is assignee or part-assignee), the death of the inventor (or one of the joint inventors) terminates the power of attorney given by the deceased inventor. A new power from the heirs, administrators, executors, or assignees is necessary if the deceased inventor is the sole inventor or all powers of attorney in the application have been terminated (but see MPEP § 409.01(f)). See also 37 CFR 1.422.

Moreover, the provisions of 37 CFR 3.71(b)(1) and (2) identify the owner or assignee that can take action in patent matters, e.g., the assignee which may conduct the prosecution of a U.S. national application for a patent (35 U.S.C. 111(a)), or any other patent proceeding (e.g., a reexamination proceeding, an interference proceeding). A national patent application is owned by one of the following individual or composite entities:

- (A) the inventor(s);
- (B) an assignee or multiple assignees of the inventor(s);
- or
- (C) some combination of the assignee(s), and inventor(s) who have not assigned away their right, title and interest in the application. Pursuant to 37 CFR 3.73(b), a party must be established as the assignee by satisfying the requirements of that subsection, in order to be recognized as an owner or part owner, for purposes of taking action in patent matters before the Office.

37 CFR 3.73. Establishing right of assignee to take action.

(a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment.

(b)(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

(i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). The documents submitted to establish ownership

may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

(c) For patent matters only:

(1) Establishment of ownership by the assignee must be submitted prior to, or at the same time as, the paper requesting or taking action is submitted.

(2) If the submission under this section is by an assignee of less than the entire right, title and interest, such assignee must indicate the extent (by percentage) of its ownership interest, or the Office may refuse to accept the submission as an establishment of ownership.

The instant application was filed by sole inventor Sweeting, with a power of attorney given to attorney Royal W. Craig. The record before the undersigned reveals no assignment of the application to either attorney Craig or Towson University¹. Attorney Craig states that he is presently attorney of record in the case. However, as provided in MPEP 409.01, the death of the inventor terminated the power of attorney given by inventor Sweeting. The petition does not include a new power of attorney to attorney Craig.

Furthermore, attorney Craig describes Towson University as having an interest in this application, and states that they made a decision to pursue this application. However, Towson University has not established, pursuant to 37 CFR 3.73(b), their right to take action in this application. The petition does not meet the requirements for attorney Craig to take action in this application on behalf of Towson University. In order for the instant petition and response to be accepted, it must be established that Towson University has such a right to take action in this application, and that, a power of attorney to attorney Craig has been given by Towson University.

¹ It is acknowledged that the application as filed included a verified statement claiming small entity status identifying Towson University as a non profit organization having interest in the application.

Further correspondence with respect to this decision should be addressed as follows:

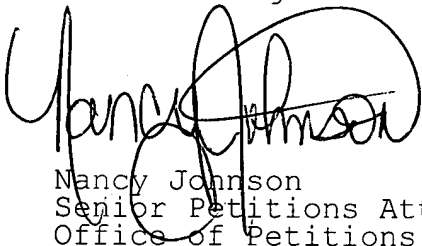
By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 ATTN: NANCY JOHNSON
 SENIOR PETITIONS ATTORNEY

By hand: Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions